IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 49 OF 1998

State of Goa,
through the Dy. Collector & S.D.O.
Land Acquisition Officer,
Mapusa, Sub-Division, Mapusa. ..... Appellants.

V/s.

Adalziza Costa Pinto,
(since deceased represented through
her legal heirs) :

(a) Cajetan Costa Pinto,
r/o 10, Vishal Co-op. Housing
Society, Manuel Gonsalves Marg,
Bandra, Bombay.

(b) Gil Costa Pinto,
12, Jumbo Co-op. Housing Society,
T.P.S. iv, Road No. 1,
Bandra, Bombay.

(c) Fernando Costa Pinto,
7, Bishop's Gate, Bullabhai Dessai
Road, Mumbai. ..... Respondents.

Mr. Sameer Khedekar, holding for Mr. G. Shirodkar, Additional Government Advocate for the appellants.

M. A. F. Diniz, advocate for the respondents.

CORAM: R.M. LODHA, J.

DATE : 22nd September, 2005.

ORAL JUDGMENT

This First Appeal is directed against the Judgment and Award dated 25th September, 1997 passed by the Additional District Judge at Panaji, whereby he enhanced the compensation of the pond land ad-measuring 3600 sq. mts. to Rs.25/- per sq. mt. and marshy land ad-measuring 400 sq. mts. to Rs. 75/- per sq. mt.

2 Pursuant to the Notification issued on 2nd January, 1985, under Section 4 of the Land Acquisition Act, 1894, (for short “the Act”) and published in the official Gazette on 28th February, 1985, the respondents' land ad-measuring 4000 sq. mts. of part of survey no. 14/4 situated at village Candolim, Bardez Taluka, for the public purpose namely for approach road to Nerul Bridge on Candolim side, was acquired. Upon completion of the acquisition proceedings the Land Acquisition Officer awarded the compensation of Rs.17,771.30 p. to the owner, since deceased, now represented by her legal representatives – present respondents. The amount of compensation of Rs.17,770.30p. was arrived at by the Land Acquisition Office by fixing the market value of the marshy land ad-measuring 400 sq. mts. at the rate of Rs.8/-per sq. mt. and pond land ad-measuring 3600 sq. mts. the rate of Rs.2/- per sq. mt. The original owner sought reference for enhancement of the market value by the Civil Court as in her view she was entitled to compensation at the rate of Rs.300/- per sq. mt. At this stage it may be noticed that there was claim of compensation by the tenants as well and the Land

Acquisition Officer held that the owner and the claimants are entitled to compensation half and half. Before the Reference Court the claimants examined four witnesses; Ivo Vaz (A.W.1), Victor Albuquerque (A.W.2), Vasudeo Kamat (A.W. 3) and Hanumant Kamat (A.W.4). The claimant relied upon two sale instances (Exh.13 and Exh.14) and the plan exhibited as Exh.15. In opposition on behalf of the present appellants one Shashikant S. Kamat, Technical Assistant in the Works Division XIII was examined as R.W.1. The copy of the plan tendered in evidence on behalf of the present appellants was exhibited as Exh.R.W.1/A and the Award given by the Land Acquisition Officer was exhibited as R.W.1/B.

3. The Reference Court after hearing the parties passed the Judgment and Award on 25th September, 1997 and as noticed above, enhanced the compensation for marshy land ad-measuring 400 sq. mts. to Rs.75/- per sq. mt. and for the pond land to Rs.25/- per sq. mt.

4. As soon as the appeal was called out for hearing, Mr. Sameer Khedekar, Advocate appeared and submitted that Mr. Guru Shirodkar, the Additional Government Advocate has been granted leave for today by the Registrar. He prayed for adjournment. As per the existing assignment the post-lunch session is reserved for hearing of the First Appeals. This First Appeal was the first to be called out today in the post-lunch session. Except for the present lawyers in this Appeal, no other lawyer was present in the Court. In the circumstances, it was not

possible to accede to the request of Mr. Sameer Khedekar for grant of adjournment as that would have resulted in collapse of the hearing board.

5. Mr. A. F. Diniz, the learned counsel for the respondents took me through the Judgment of the Reference Court and also read the evidence that was led by the parties before the Reference Court. With his assistance I went through the record. According to him the Reference Court was fully justified in enhancing the compensation of marshy land ad-measuring 400 sq. mts. from Rs.8/- per sq. mt. to Rs.75/- per sq. mt. and for pond land from Rs.2/- per sq. mt. to Rs.25/- per sq. mt. He submitted the two sale instances provided guidance that the market value fixed by the Land Acquisition Officer was grossly inadequate and even if the compensation was not awarded at the rate the land under the two sale deeds was sold, after necessary induction, the Award of compensation by the Reference Court cannot be said to be unjustified.

6. That 4000 sq. mts. of land that was acquired pursuant to the Notification issued under Section 4 of the the Act on 2nd January, 1985 and published on 28th February, 1985 comprised of 3600 sq. mts. of pond land and 400 sq mts. of marshy land is not in dispute. The Land Acquisition Officer before fixing the market price of the subject land sought details of sale instances that took place in the locality for the period from 1983 to 1985. Pursuant thereto the Mamlatdar of Bardez

reported details of several sales as reproduced below:-

Sr. No.	Date of execution	Area in sq.mts.	Total value in Rs.	Rate per sq.mt.	Distance
1.	23.5.84	239 sq.mt.	Rs.40000/-	Rs.167.30	1 1/2 Km.
2.	22.2.84	250	Rs.10000/-	Rs. 40/-	1 Km.
3.	1.10.83	-	Rs. 4163/-	Rs. -	2 Km.
4.	9.11.84	406	Rs.20300/-	Rs. 60/-	11/2 Km.
5.	28.11.84	775	Rs.40000/-	Rs. 51.60	1/2 Km.
6.	12.7.84	723	Rs.15000/-	Rs. 20.70	1 1/2 Km.
7.	28.2.85	300	Rs.40000/-	Rs.133.00	2 Km.

7. The Land Acquisition Officer examined each of the sales as indicated above in paragraphs 9 to 14 of his Award thus:-

> "9. The transaction at Sr.No.1 relates to a plot with an old house, 2 coconut trees and two other trees, about 60 mts. away from the main road leading from Candolim-Sinquerim, about 1/2 Km. from the present site. The rate paid is Rs.167.30 per sq.mts. This is a residential plot where there was already a house existing.
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> 10. The transaction at Sr.No.2 is vacant land and there are no trees. A house is constructed now. It is about 200 mts. away from main road of Candolim-Sinquerim with access. It is a residential plot well developed and the rate paid is Rs.40/- per sq.mts.

11. The transaction at Sr.No.3 relates to a vacant plot adjacent to the main road and about 2 kms. away from the site under acquisition and its area is not mentioned in the sale statistics report of the Mamlatdar.

12. The transactions at Sr.No.4 and 6 relate to plots close to the beach and about 1/2 km. away from the main road. There are no trees, but one pump house has been constructed recently. The rate paid is Rs.50/- and 20.70 per sq.mt.

13. The transaction at Sr.No.5 relates to a plot about 200 mts. away from the main road and 1 1/2 Kms. away from the site. There are 5 coconut trees in the land and the rate paid is Rs.51.60.

14. The transaction at Sr.No.7 relates to a vacant plot adjacent to the road leading to Candolim Beach and about 50 mts. away from the main road. It is a residential sub-divided plot. This transaction is executed exactly on the date of publication of Sec.4 Notification in this case and the rate paid is Rs.133/- per sq.mt."

On the basis of the aforesaid discussion, the Land Acquisition Officer observed that in the said transactions the rates ranged from Rs.20.65 to Rs.167.30p per sq. mt. but all those transactions related to residential

plots. The Land Acquisition Officer found that the sale instances have no application. He also held that the land covered by the pond cannot be used for any purpose other than fishing and lot of expenditure will be involved in filling the same. He further observed that even it be assumed the land is filled up and it can be used for agricultural purposes, lower price will have to be awarded for the submerged land. In this backdrop the Land Acquisition Officer fixed the market value of the marshy land at Rs.8/- per sq. mt. and for the pond land at the rate of Rs.2/ per sq. mt.

8. Before the Reference Court, the claimant claimed compensation at the rate of Rs.300/- per sq. mt. and the said claim was founded on the two sale instances Exh.13 and Exh.14 and the oral evidence of AW.1, A.W.2, A.W.3 and A.W.4.

9. I shall now turn to two sale instances. Exh.13 relates to the sale of agricultural land. It was effected on 25th February, 1985. The price of the agricultural land sold vide Exh.13 was fixed at Rs.125/- per sq. mt. plus Rs.20/- per sq. mt. towards brokerage. The said land is about l.4 kms. away from the subject land. The area of the land that was the subject-matter of Exh.13 was about 4293 sq. mts. The vendor of the said land Vasudeo V. Kamat has been examined as A.W.3. In his deposition A.W.3 has stated that he alongwith other co-owners sold the land to India Hotel Co. Ltd. at the rate mentioned in the sale deed. He admitted that he did not know what was the market rate of the land in

that area at that time. He also admitted that he made no enquiries regarding the prevailing market rate of land. As the purchasers offered them the price of Rs.125/- per sq. mt. and they found the offer acceptable, they sold the land. Hanumant D. Kamat (one of the other co-owners-A.W.4) deposed that the land was land-locked property. The India Hotels Pvt. Ltd. Who were the neighbours wanted to purchase their land and the said land was sold to them. He did state that in his opinion in the year 1985 the price of the land in the locality was Rs.125/- per sq. mt. In his cross-examination he admitted that India Hotel Co. Ltd. purchased the land for expansion of their business. There were hotels at a distance of about 75 to 80 mts. from their property. The adjacent owners had also sold their properties to the India Hotel Co. Ltd. This is the evidence of sale vide sale deed Exh.13.

10. The other sale deed (Exh.14) is of the year 1984 and relates to the sale of an area of 7450 sq. mts. The land that was sold vide Exh.14 was a coconut grove. A.W.2 - the purchaser of the said land stated that the land purchased by them was abutting the Sinquerim – Candolim road. It was above the road level by about 1 ½ mts. There was a restriction of a construction from the sea-shore upto 500 mts. and that the land purchased by them was affected by the said restriction. He admitted that the land purchased by them was a level land and meant for construction. They purchased the land at the rate of Rs.208/- per

sq. mt. According to him at the time of the purchase of the road, the width of the Sinquerim-Candolim road abutting that land was about 8 mts. wide and from there some land was left for the road-widening.

11. That the two sale instances Exh.13 and Exh.14 upon which the original claimants founded her case for enhancement were not held comparable by the Reference Court itself. This is what the Reference Court had to say:-

> "Admittedly the acquired land was not an agricultural land. As contended by A.,W.1 since this land was given for construction of hotel or housing complex it was not developed for agricultural purposes. Thereon on the date of the acquisition it was an un-used land and at no stretch of imagination a similarity can be drawn of the acquired land to the sale instances Exh.13 and 14, because admittedly the sale instance in exh.13 was an agricultural land and the sale instance at Exh.14 is a coconut grove."

12. Though the Reference Court held that the sale instances Exh.13 and Exh.14 were not comparable; yet the two sale-deeds were treated as bench-mark to arrive at the market value of subject land. The Reference Court held that the acquired land has the potential for use as agricultural land as well as for building purposes by making necessary development. He held that after improvement the acquired land would

have definitely fetched a price of Rs.125/- per sq. mt. The Reference Court then thought that it could take judicial notice of the fact that there was rise in the prices of land near the developing towns of Candolim and Calangute and that Candolim beach was just 2 kms. away from the acquired land. The Reference Court then after giving deduction of improvement at the rate of 40% for marshy land and 80% for pond land determined the compensation of the acquired land on that basis.

13. It needs no emphasis that under Section 23 of the the Act, what is required to be determined is the prevailing market value of the land as on the date of the Notification published under Section 4 (1) of the Act. Though in the case of ***Smt. Saraswati Devi & Ors. vs. U. P. Government & Anr.***, AIR 1992 S.C. 1620 the Apex Court approved the view that the market value shall be determined according to the use to which the land was put on the date of the Notification under Section 4 of the Act, in the subsequent decision in the case of ***R. Ram Reddy & Ors. vs. Land Acquisition Officer, Hyderabad Urban Development Authority, Hyderabad & Ors.***, (1995) 2 SCC 305 it was held that the market value of the acquired land cannot only be its value with reference to the actual use to which it was put on the relevant date and envisaged under Section 4(1) of the Act, but ought to be its value with reference to the better use to which it is reasonably capable of being put in the immediate or near future. Possibility of the acquired land put to certain

use on the date envisaged under Section 4(1) of the Act of becoming available for better use in the immediate or near future is regarded as its potentiality. When the acquired land has the potentiality of being used for building purposes in the immediate or near future it has such potentiality which is regarded as building potentiality of the acquired land.

14. In the context of building potentiality the Courts have held that certain questions need to be answered: (i) whether there is pressure on the land for building activity; (ii) whether the acquired land is suitable for building purposes; (iii) whether the extension of the said activities is towards the land acquired; (iv) what is the basis of the progress and how far the said activity is expanded and within what time; (v) whether the buildings have been put up on the lands purchased for building purposes,; (vi) what is the basis of the progress and how far such activity is expanded and within what time; (vii) whether buildings have been put up on the land purchased for building purposes; and (viii) what is the distance between the built in land and the land acquired; and similar other questions and the overall picture drawn on the said revealing circumstances that afford the solution.

15. Insofar as the acquired land is concerned, as already indicated above, it is 4000 sq. mts. That area comprises of 3600 sq. mts. of pond land and 400 sq. mts. of marshy land. The depth of the

pond is about 1 mt. or little less than that. The river is about 25 mts. from the said land. Marshy land ad-measuring 400 sq. mts. was not under cultivation. The houses from the acquired land are about 400mts. away. The sale instance Exh.13 relates to the land which is 1400 mts. away from the acquired land while the sale instance Exh.14 pertains to the land which is 800 mts. away. For making the pond land fit for agricultural purposes the earth was required to be filled up. There is no firm and definite evidence by the claimant about the expenditure that was required to be incurred for developing the acquired land fit for agricultural use. Similarly, there is no evidence about likely expenditure required to be incurred for developing the acquired land fit for construction. The enhancement of the compensation by the Reference Court for pond land from Rs.2/- per sq. mt. to Rs.25/- per sq. mt. and for marshy land from Rs.8/- per sq. mt. to Rs.75/- per sq. mt. surely is on higher side.

16. The learned counsel for the claimants-respondents submitted that the award of compensation for the pond land at the rate of Rs.2/- per sq. mt. and for marshy land at the rate of Rs.8/- per sq. mt. fixed by the Land Acquisition Officer was grossly inadequate and even if sale instances were found not comparable, the Court could take judicial notice of certain facts and in matters like this some guess work is always there.

17. The Land Acquisition Officer in his award has referred to the details of seven sale instances that took place during the years 1983-1985. The rates of the transactions range from Rs.20.65 to Rs.167.30 p. per sq. mt. It is true that none of these transactions can strictly be said to be comparable. The two sale transactions upon which reliance was placed by the claimant before the Reference Court are for Rs.125/- per sq. mt. and Rs.200/- per sq. mt. are also not comparable that way. However, one thing is clear from the evidence that the acquired land after earth filling and improvements has building potentiality as well as potentiality for agricultural use. There was no restriction for use of the acquired land for building purposes. Though there is no definite evidence to the actual cost likely to incur for improvements, in my view after giving adequate deduction for improvement, prevalent market value can be fairly determined. The rate of deduction given by the Reference Court is on the lower side. Taking overall facts and circumstances of the case, the nature of land, the building and agricultural potentiality after improvement, the location being 2 Kms. away from Candolim beach, there being no building restriction and other relevant aspects, in my considered view the award of compensation for marshy land at the rate of Rs.50/- per sq. mt. and for pond land at the rate of Rs.15/- per sq. mt. can be reasonably fixed as the prevailing market rate on the date of publication of the Notification under Section 4

(1) of the Act.

18. Consequently, the Appeal is allowed in part. The market value of the acquired marshy land ad measuring 400 sq. mts. determined by the Reference Court at the rate of Rs.75/- per sq. mt. is reduced to Rs. 50/- per sq. mt. and that of pond land ad measuring 3600 sq. mts. is reduced from Rs.25/- per sq. mt. to Rs.15/- per sq. mt. The claimants shall be entitled to the statutory benefits of solatium and interest at the market value of the land afore-determined. In other words, save and except the reduction of the market value as afore-narrated, the other directions given in the impugned Judgment and Award by the Additional District Judge for the amount u/s 23(1-A), interest and solatium are maintained. The Registrar of this Court is directed to calculate the amount of compensation that is due and payable to the claimants-respondents as per this Judgment and out of the amount deposited by the appellants make the payment accordingly alongwith accrued interest to the claimants and the remaining amount alongwith the accrued interest be refunded to the appellants.

19. No costs.

R. M. LODHA, J.

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